

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

C75258
2013-0322

**PROFESSIONAL SERVICES CONTRACT
FOR
EMISSION REDUCTION CREDIT BROKERAGE AND CONSULTING SERVICES**

I. PARTIES

THIS PROFESSIONAL SERVICES CONTRACT ("Agreement") is made on the countersignature date ("Effective Date") between the **CITY OF HOUSTON, TEXAS** ("City"), a home-rule city of the State of Texas, and **ELEMENT MARKETS, LLC** ("Broker"), a Delaware limited liability company authorized to do business in Texas.

The Parties agree as follows:

A. ADDRESSES

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City
Jason Iken
Senior Assistant Director
Public Works and Engineering
Department
4545 Groveway Dr.
Houston, TX 77087

With Copy To
City Attorney
City of Houston
PO Box 368
Houston, TX 77001

Broker
Michael Taylor
Sr. Vice President
Element Markets, LLC
3555 Timmons Lane, Suite 900
Houston, TX 77027

With Copy To
Contract Administration
Element Markets, LLC
3555 Timmons Lane, Suite 900
Houston, TX 77027

B. TABLE OF CONTENTS, SCHEDULES AND EXHIBITS

This Agreement consists of the following sections and exhibits:

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- A. EQUAL EMPLOYMENT OPPORTUNITY
- B. MWBE SUBCONTRACT TERMS
- C. DRUG POLICY COMPLIANCE AGREEMENT (Must be returned prior to signing)
- D. NO SAFETY IMPACT POSITIONS (Must be returned prior to signing)
- E. DRUG POLICY COMPLIANCE DECLARATION
- F. SCOPE OF WORK

C. PARTS INCORPORATED

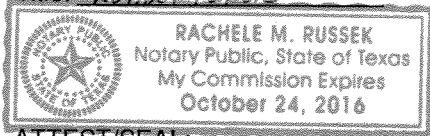
All of the above-described sections and exhibits are incorporated into this Agreement.

D. SIGNATURES

The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):
WITNESS (if not a corporation):

By: [Signature]
Name: RACHELE M. RUSSEK
Title: NOTARY PUBLIC



ATTEST/SEAL:

[Signature]
City Secretary

APPROVED:

[Signature]
Director,
Public Works & Engineering
Department

APPROVED AS TO FORM:

[Signature]
Senior Assistant City Attorney
L.D. File No. 037-1200286-001

ELEMENT MARKETS, LLC

By: [Signature]
Name: Michael Taylor
Title: Senior Vice President

Tax Identification No.: 20-3316079

CITY OF HOUSTON, TEXAS

Signed by:

[Signature]
Mayor Mark White

COUNTERSIGNED BY:

[Signature]
City Controller [Signature]

DATE COUNTERSIGNED:

4/16/13
("Effective Date")

II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all schedules, exhibits and written amendments authorized by City Council and Broker and duly authorized Change Orders.

"City" is defined in the **Section I** of this Agreement and includes its successors and assigns.

"Broker" is defined in **Section I** of this Agreement and includes its successors and assigns and its authorized representative.

"Broker's Representative" means the individual who shall directly manage and direct the Work under this Agreement and who has authority to act for the Broker, but who may or may not have the authority to bind Broker contractually.

"Contract Price" means the total amount due for the Work set forth in **Exhibit F**.

"Day" or "Days" means calendar days, provided however, that if a deadline falls on a Saturday, Sunday or City Holiday, then the deadline shall be automatically extended to the next day.

"Director" means the Director of the City of Houston Public Works and Engineering Department or the person he or she designates.

"Documents" means the written materials, documents, data, messages, correspondence, drawings, or plans that Broker specifically prepares or provides the City under this Agreement whether in electronic or paper format.

"Effective Date" means the date the City Controller countersigns the signature page of this Agreement and the Agreement becomes effective and binding.

"Emission Reduction Credits" or "ERCs" means the Emission Reduction Credits owned by the City for the Houston-Galveston-Brazoria (HGB) area under the existing Texas Commission on Environmental Quality (TCEQ) program.

"Parties" means City and Broker who are bound by this Agreement.

"Work" means all professional services required by or reasonably inferable from the Agreement and **Exhibit F** (Scope of Work), including all labor, materials, tools, supplies, equipment, transportation, mobilization, insurance, subcontracts, supervision, management, reports, incidentals, quality control, and other items necessary or incidental by Broker to fulfilling Broker's obligations.

III. SCOPE OF WORK

A. SCOPE OF WORK

Broker shall provide the City emission reduction credit brokerage and consulting services as described in **Exhibit F** ("Scope of Work") of this Agreement and on the basis of any Change Orders.

B. COORDINATE PERFORMANCE

Broker shall coordinate all of its performance with the Director and such other person(s) as the Director may specify. Broker shall keep said person(s) currently advised at a minimum on a biweekly basis of developments relating to the performance of this Agreement, and Broker shall at all appropriate times advise and consult with the Director.

C. START DATE

Broker shall begin its performance of Services on the Effective Date. Broker acknowledges that time is of the essence.

D. WORK BY THE CITY

The City reserves the right to undertake or award contracts for the performance of similar type work as contemplated herein, and to do so will not breach or otherwise violate the Agreement.

IV. DUTIES OF BROKER

A. BROKER REPRESENTATIVE

At all times during performance of the Work and until the Work is completed and accepted, Broker shall manage, supervise, and direct the Work under this Agreement. Broker's Representative must be knowledgeable in the performance of ERC markets and ERC brokerage services.

Prior to the start of performance of the Work, Broker shall advise the Director in writing of the Broker Representative's contact phone numbers and email. Broker's Representative will have management responsibility for the Work and to receive and act on technical matters and resolve problems of a contractual nature.

Prior to substituting another individual for Broker's Representative, Broker shall notify the Director reasonably in advance and shall submit justification in sufficient detail to permit evaluation of the impact on the Work. No such substitution shall be made by Broker without first securing the Director's written approval, such approval not to be unreasonably conditioned, delayed or withheld.

B. WORK PERFORMANCE STANDARDS

- (1) Broker shall supervise and direct the Work, using Broker's full skill and attention. Broker shall be solely responsible for and have control over means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement, unless the Agreement or Director gives contrary specific written instructions concerning these matters.
- (2) Unless otherwise provided in this Agreement, Broker shall provide and pay for labor, materials, tools, equipment and machinery necessary for the proper execution and completion of the Work.
- (3) Broker shall enforce strict discipline and good order among Broker's employees, agents, subcontractors and other persons carrying out the Work.
- (4) Broker shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work.
- (5) Broker shall take all precautions to ensure that no damage to private or public property results from its operations. Broker must repair or replace items damaged by it at no cost to the City.
- (6) Broker shall comply with all applicable state and federal laws and regulations, and the City Charter and Code of Ordinances.

- (7) Broker shall comply with the City's **Equal Employment Opportunity Ordinance** as set out in **Exhibit A**.

C. **INVOICING**

Broker shall submit its invoices on forms approved in advance by the Director, which may include electronic format, accompanied by support documents as may be requested by the Director. Each invoice Broker submits must include the documents required to support the charges it contains. Each invoice must be identified by the Contract name and Contract number. All invoices are to be delivered or mailed to the following location:

Jason Iken
Senior Assistant Director
Public Works & Engineering Department
4545 Groveway Dr.
Houston, TX 77087

D. **RELEASE**

BROKER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

E. **INDEMNIFICATION**

(1) **BROKER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

- a. **BROKER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', BROKERS', OR SUBCONTRACTORS' (COLLECTIVELY IN THIS SECTION IV.E., "BROKER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- b. **THE CITY'S AND BROKER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER BROKER IS IMMUNE FROM LIABILITY OR NOT;
OR**
- c. **THE CITY'S AND BROKER'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER BROKER IS IMMUNE FROM LIABILITY OR NOT.**

(2) **BROKER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THE CONTRACT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. BROKER SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

(3) NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF BROKER FOR THE CITY'S CONCURRENT NEGLIGENCE SHALL NOT EXCEED \$1,000,000, OR THE STATUTORY MAXIMUM, WHICHEVER IS GREATER.

(4) INDEMNIFICATION PROCEDURES

Notice of Indemnification Claims: If the City or Broker receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other Party within ten (10) Days. The notice must include the following:

- i. a description of the indemnification event in reasonable detail,
- ii. the basis on which indemnification may be due, and
- iii. the anticipated amount of the indemnified loss.

This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice.

If the City does not provide this notice within the 10-Day period, it does not waive any right to indemnification except to the extent that Broker is prejudiced, suffers loss, or incurs expense because of the delay.

(5) DEFENSE OF INDEMNIFICATION CLAIMS

- a. Assumption of Defense: Broker may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Broker shall then control the defense and any negotiations to settle the claim. Within ten (10) Days after receiving written notice of the indemnification request, Broker must advise the City as to whether or not it will defend the claim. If Broker does not assume the defense, the City shall assume and control the defense, and all defense expenses shall be reimbursed monthly and be in addition to any indemnified losses.
- b. Continued Participation: If Broker elects to defend the claim, the City may retain separate counsel to participate in, but not control, the defense and to participate in, but not control, any settlement negotiations. Broker may settle the claim without the consent or agreement of the City, unless it:
 - i. would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City;
 - ii. would require the City to pay amounts that Broker does not fund in full, or
 - iii. would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

(6) INDEMNIFICATION-SUBCONTRACTOR'S INDEMNITY

BROKER SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

F. **RELEASE AND INDEMNIFICATION - (PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT)**

(1) BROKER AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING BROKER, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS BROKER FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET UNLESS THE CITY USES SUCH EQUIPMENT, SOFTWARE, PROCESS OR DOCUMENT IN A MANNER OTHER THAN ITS INTENDED OR FORESEEABLE PURPOSE. BROKER SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

(2) BROKER SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

(3) WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, BROKER SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND BROKER SHALL REFUND THE PURCHASE PRICE.

G. **INSURANCE**

(1) With no intent to limit Broker's liability under the indemnification provisions set forth above, Broker shall provide and maintain in full force and effect during the term of this Agreement and all extensions and amendments thereto, at least the following insurance and available limits of liability.

(2) If any of the following insurance is written as "claims made" coverage and the City is required to be carried as an additional insured, then Broker's insurance shall include a one-year extended discovery period after the last date that Broker provides any work under this Agreement.

(3) "Aggregate" amounts of coverage, for purposes of this Agreement, are agreed to be the amounts of coverage available during a fixed 12 month policy period. If Limit of Liability for Excess Coverage is \$2,000,000 or more, Limit of Liability for Employer's Liability may be reduced to \$500,000.

(4) Risks and Limits of Liability: The Broker shall provide at a minimum the insurance coverages and limits of liability given in Table 1.

(5) Form of Policies: Insurance may be in one or more policies of insurance, the form of which is subject to approval by the Director. It is agreed, however, that nothing the Director does or fails to do with regard to the insurance policies shall relieve Broker from its duties to provide the required coverage hereunder and Director's actions or inactions will never be construed as waiving City's rights hereunder.

(6) Issuers of Policies: **The issuer of any policy shall have (1) a Certificate of Authority to transact business in Texas or (2) have a Best's rating of at least B+ and a Best's**

Financial Size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide and the issuer must be an eligible non-admitted insurer in the State of Texas. Each insurer shall be subject to approval by the Director in his or her sole discretion as to conformance with these requirements, pursuant to subparagraph (5) above and Director shall approve or notify Broker of Director's disapproval in writing prior to the parties' execution of this Agreement.

- (7) Insured Parties: Each policy (Commercial General Liability, Automobile Liability and Excess Coverage), except those for Workers' Compensation, Employer's Liability, and Professional Liability, must name the City, its officers, agents and employees, as additional insured parties on the original policy and all renewals or replacements during the term of this Agreement. The City's status as an additional insured under the Broker's insurance does not extend to instances of sole negligence of the City unmixed with any fault of the Broker.
- (8) Deductibles: Broker shall assume and bear any claims or losses to the extent of deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents, or employees.
- (9) Cancellation: Broker agrees that a policy may not be cancelled or non-renewed unless thirty (30) Days' advance notice of cancellation is given in writing to the Director by Broker. Furthermore, Broker shall indemnify City for any loss suffered by City to the extent that such loss is attributable solely to Broker's failure to provide at least 30-Days prior notice of cancellation or non-renewal to the insurance policies required by this Agreement.
- (10) Subrogation: Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents, or employees.
- (11) Endorsement of Primary Insurance: Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the additional insured with respect to claims arising hereunder.
- (12) Liability for Premium: Broker shall be solely responsible for payment of all insurance premium requirements hereunder and the City will not be obligated to pay any premiums.
- (13) [Intentionally Omitted]
- (14) Subcontractor Insurance Requirements: Broker shall require Subcontractors and Suppliers to obtain Commercial General Liability, Workers' Compensation, Employee's Liability and Automobile Liability coverage that meets all the requirements of Table 1. The amount must be commensurate with the subcontract, but not less than \$500,000 per claim. Broker shall require all Subcontractors with whom it contracts directly, whose subcontracts exceed \$100,000 to provide proof of commercial, general and automobile liability insurance coverage meeting the above requirements. Broker shall comply with all requirements set out under Paragraph (13) as to Workers' Compensation Insurance for all subcontractors and suppliers.
- (15) Proof of Insurance: Prior to beginning services and at any time during the term of this Agreement, Broker shall furnish the Director with Certificates of Insurance, along with an Affidavit from Broker confirming that the Certificate accurately reflects the insurance coverage that will be available during the Term of the Agreement. Failure of Broker to provide policy information, as requested, may be deemed, in the Director's or City Attorney's discretion, to constitute a breach of this Agreement. **BROKER REPRESENTS AND WARRANTS THAT IT WILL OBTAIN THE INSURANCE SET OUT IN THIS**

AGREEMENT PRIOR TO COMMENCEMENT OF ANY WORK. Notwithstanding the foregoing, such right to receive access to copies of Broker's insurance policies shall only be exercised in the event of a claim. Broker shall provide policy information as needed to settle such claim and shall make copies of its policies available for review at Broker's facility offices at reasonable times and with reasonable notice.

- (16) Notwithstanding the proof of insurance requirements set forth above, it is the intention of the Parties that Broker, continuously and without interruption, maintain in force the required insurance coverages set forth herein. Failure of Broker to comply with this requirement shall constitute a material breach by Broker allowing the City, at its option, to immediately suspend or terminate work or exercise any other remedy allowed under this Agreement. Broker agrees that the City shall never have waived or be estopped to assert a material breach of the Agreement because of any acts or omissions by the City regarding its review or non-review of insurance documents provided by Broker, its subcontractors, suppliers, agents, employees or assigns.
- (17) If professional liability coverage is written on a "claims made" basis, Broker shall also provide proof of renewal each year for 2 years after substantial completion of the Work.
- (18) Broker represents and warrants that its insurance policies have the coverage required by this Agreement and agrees to indemnify City for any omissions or gaps in required coverage.

TABLE 1
REQUIRED COVERAGES

<u>(Coverage)</u>	<u>(Limit of Liability)</u>
1 Workers' Compensation:	Statutory Limits for Workers' Compensation
2 Employer's Liability:	Bodily Injury by Accident \$100,000 (each accident) Bodily Injury by Disease \$100,000 (policy limit) Bodily Injury by Disease \$100,000 (each employee)
3 Commercial General Liability: Including Broker's Protective, Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, and Products and Completed Operations (for a period of one year following completion of the Work).	Combined single limit of \$500,000 (each occurrence), subject to general aggregate of \$1,000,000
4 Automobile Liability Insurance: (For automobiles furnished by Broker in the course of its performance under this Agreement, including Employer's Non-Owned and Hired Auto Coverage)	\$1,000,000 combined single limit each occurrence
5 Professional Liability	\$1,000,000 per claim; \$1,000,000 per aggregate

Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period unless otherwise indicated.

H. CONFIDENTIALITY

Broker and its agents, employees, brokers, and subcontractors shall hold all City information, data, and documents (collectively, "Information") that they receive, prepare, or to which they have access, in strictest confidence. Broker, its agents, employees, brokers, and subcontractors shall not disclose, disseminate, or use the Information other than in connection with the performance of the Work and to its employees, directors, officers, members, agents, contractors, advisors, lenders, financial partners and other representatives who (a) are actively and directly participating in the Work or who otherwise have a need to know the Information and (b) have been informed of the terms of this Agreement and agreed to act in accordance with such terms or substantially similar restrictions on the use and disclosure of such Information ("Representatives") unless the Director authorizes it in writing. Broker shall establish procedures to ensure confidentiality of the Information and to prevent its unauthorized use and disclosure. Broker shall obtain written agreements from its agents, employees, brokers, and subcontractors who perform work under this Agreement, which bind them to the terms in this Paragraph or substantially similar restrictions on the use and disclosure of Information.

I. OWNERSHIP AND USE OF DOCUMENTS

To the extent specifically prepared for City, all reports, documents and drawings deliverable to City pursuant to this Agreement ("Deliverables") shall become City's property upon delivery provided that any portion of the Deliverables prepared for use by other clients of Broker shall remain the property of Broker. Subject to the foregoing, Broker conveys and assigns to the City its entire interest and full ownership in such Deliverables. Broker may retain file copies of such Deliverables. The underlying methodology of the Deliverables and all other reports, notes, calculations, data, drawings, estimates, specifications, manuals, other documents and all computer programs, codes and computerized materials prepared by or for Broker are instruments of Broker's work ("Proprietary Information") and shall remain Broker's property.

Broker shall execute all documents required by the Director to further evidence City's ownership of the Deliverables.

City, its employees and agents ("Permitted Users") shall have a right to make and retain copies of necessary Proprietary Information, except uncompiled code, and to use such necessary Proprietary Information, provided however, the Proprietary Information shall not be used or relied upon by any parties other than Permitted Users, and such use shall be limited to the particular project and location for which the Proprietary Information was provided.

J. FEES AND NOTICES

Unless otherwise provided in the Agreement, Broker shall secure and pay for all inspections, licenses, certificates, including any professional licenses required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder and necessary for proper execution and completion of the Work. Broker shall maintain any required professional licenses during the term of this Agreement. Any failure of the Broker to maintain such professional licenses or any revocation or suspension thereof, even if probated, shall entitle the Director in his sole discretion, to immediately terminate this Agreement. Broker shall immediately notify the Director of any suspension, revocation or other detrimental action against his license.

If Broker observes that portions of the Agreement are at variance therewith, Broker shall promptly notify the Director in writing, and necessary changes shall be accomplished by appropriate modification.

K. MINORITY AND SMALL BUSINESS ENTERPRISES

- (1) Broker shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Broker shall make good faith efforts to award subcontracts or supply agreements in at

least 5 % of the value of this Agreement to MWBEs. Broker acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO"), and will comply with them.

- (2) Broker shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration to be conducted in Houston, Texas, if directed to do so by the OBO Director. MWBE subcontracts must contain the terms set out in **Exhibit B**.

L. DRUG ABUSE DETECTION AND DETERRENCE

- (1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Brokers while on City Premises is prohibited. Broker shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Brokers, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- (2) Before the City signs this Agreement, Broker shall file with the Contract Compliance Officer for Drug Testing ("CCODT"),
 - (a) a copy of its drug-free workplace policy,
 - (b) the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit C**, together with a written designation of all safety impact positions, and
 - (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit D**.

If Broker files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit E**. Broker shall submit the Drug Policy Compliance Declaration to the CCODT within thirty (30) Days of the expiration of each 6-month period of performance and within thirty (30) Days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its notice to proceed or if no notice to proceed is issued, on the first Day Broker begins work under this Agreement.

- (3) Broker also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Broker's employee work force.
- (4) Broker shall require that its subcontractors comply with the Executive Order and Broker shall secure and maintain the required documents for City inspection.

M. SAFETY.

Broker shall abide by all applicable City rules, regulations, programs, ordinances and codes with regard to safety.

N. PAY OR PLAY

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order No. 1-7, are incorporated into this Agreement for all purposes. Broker has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval

of this Agreement. Broker shall execute the below Pay or Play Documents¹ and submit them to the Director at the time of execution of this Agreement.

<u>DOC NO</u>	<u>DOC TITLE</u>
00460 (POP-1A)	Pay or Play Program Acknowledgement Form
00630 (POP02)	Certification of Agreement to Comply with Pay or Play Program
00631 (POP-3)	List of Participating Subcontractors
00840 (POP-1)	Pay or Play Program Requirements

IF BROKER DOES NOT PAY IN ACCORDANCE WITH THE PAY OR PLAY PROGRAM WITHIN THIRTY (30) DAYS OF THE DATE CITY ENGINEER SENDS BROKER WRITTEN NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS UP TO THE AMOUNT OWED FROM ANY PAYMENTS OWED TO BROKER UNDER THIS AGREEMENT, AND BROKER WAIVES ANY RECOURSE.

V. DUTIES OF CITY

A. PAYMENTS AND COMPLETION

- (1) Amounts Due: The City shall make payments to Broker of the amounts agreed to in Exhibit F only from the gross proceeds of each ERC sale and in accordance with the procedures set forth in this Agreement.
- (2) The City shall pay Broker within thirty (30) Days of the receipt and approval of the invoice.

B. TAXES

- (1) Broker shall pay any sales, consumer, use, and similar taxes for the Work, or portions thereof, provided by Broker that it is legally required to pay, whether or not in effect on the Effective Date of this Agreement.
- (2) Broker shall obtain, and require subcontractors to obtain, any necessary permits from the State and from local taxing authorities to perform contractual obligations under the Agreement, including sales tax permits.
- (3) The City is exempt from the Federal Transportation and Excise Tax. Broker shall comply with federal regulations governing such exemptions.
- (4) Materials incorporated into the Work are exempt from state sales tax according to provisions of the Texas Tax Code, Chapter 151, Subsection H.

C. LIMIT OF APPROPRIATION

- (1) The City's duty to pay money to Broker under the Agreement is limited in its entirety by the provisions of this Paragraph.
- (2) In accordance with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has not appropriated or allocated any funds to pay money due under the Agreement. The City's obligation for payment under this Agreement, if any, is limited to funds received from the sale of ERCs. Unless adequate funds are received, the City shall have no obligation to pay Broker. Broker must look to

¹ All City of Houston Pay or Play ("POP") Documents can be downloaded from:
<http://www.houstontx.gov/obo/popforms.html>.

these designated funds only and to no other funds for the City's payment under this Agreement.

VI. TERM AND TERMINATION OR SUSPENSION OF THE AGREEMENT

A. TERM

This Agreement is effective on the Effective Date and remains in effect (i) until three (3) years from the Effective Date, or (ii) until the Work is completed and accepted by the City; such acceptance to occur upon payment of any fees due to Broker under this Agreement, whichever comes first. Broker acknowledges that time is of the essence.

B. TERMINATION OR SUSPENSION OF THE AGREEMENT BY CITY

- (1) The City may, without cause, after giving Broker twenty-four (24) hours prior written notice, order Broker to suspend, delay, or interrupt the Work in whole or in part for such period of time as City may determine. An adjustment shall be made in time for performance equivalent to the length of time of suspension, but there shall be no change in the price the City pays.
- (2) This Agreement may be terminated by the City, with or without cause, upon thirty (30) days prior written notice signed by the Director.
- (3) Upon receipt of a notice of termination and prior to the effective date of the termination, Broker shall, unless the notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) Days after receipt of the notice of termination, Broker shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination.
- (4) Reproducible copies of all completed or partially completed Documents prepared under this Agreement prior to the effective date of termination shall be delivered to the Director as a precondition to final payment.
- (5) Notwithstanding the foregoing, if the City terminates without cause and should any transaction contemplated by this Agreement be entered into by the City within the six (6) month period after the termination date with any party that was introduced to the City by Broker, then Broker shall still be due its Service Fee on such transaction.

C. TERMINATION BY BROKER

- (1) Broker may terminate the Agreement upon thirty (30) Days prior written notice, only:
 - (a) if the Work is suspended under Section VI(B)(1) for a period of ninety (90) days or more, through no act or fault of the Broker, or its subcontractors, agents or employees;
 - (b) for non-payment if City does not make payment within sixty (60) days of Broker's invoice;
 - (c) Issuance of an order of a court or other public authority having jurisdiction mandating the Work be permanently stopped; or
 - (d) an event of Force Majeure lasting more than thirty (30) days.
- (2) Broker shall have the right to terminate pursuant to subsection (1) of this Section C only if

the City fails to cure the default after receiving thirty (30) Days prior written notice from Broker. Broker must deliver a written notice to the City describing the default as listed in subsection (1) and the proposed termination date. The date must be at least thirty (30) Days after the Director receives the notice. Broker, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Broker may terminate its performance on the termination date.

VII. MISCELLANEOUS

A. INDEPENDENT CONTRACTOR

Broker is an independent contractor and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Brokers' performance under this Agreement. All personnel Broker uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Broker is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

B. FORCE MAJEURE

- (1) Timely performance by both Parties is essential to this Agreement. However, neither Party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure that was not within the control of the Party claiming such inability to perform and that could not have been avoided by its exercise of due diligence and care. In this Agreement, Force Majeure means fires, natural disasters, hurricanes, and other acts of God, explosions, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- (2) This relief is not applicable unless the Party claiming the inability to perform does the following:
 - (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible; and
 - (b) provides the other Party with prompt written notice of the cause and its anticipated effect and length of delay.
- (3) The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
- (4) If the Force Majeure continues for more than thirty (30) Days, the Director may terminate this Agreement by giving seven (7) Days written notice to Broker. This termination is not a default or breach of this Agreement. **BROKER WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.**
- (5) The Director shall determine when a Force Majeure condition has been removed. Broker shall then resume its performance of the Work under this Agreement.

- (6) Broker is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Broker shall employ only fully trained and qualified personnel during a strike.

C. SEVERABILITY

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either Party.

D. ENTIRE AGREEMENT

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

E. WRITTEN AMENDMENT

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Broker. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. APPLICABLE LAWS

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction, without reference to their choice of law provisions. The Parties consent to Venue for any litigation relating to this Agreement being Harris County, Texas.

G. NOTICES

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third Day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other Party at the address set out in Section I.A. or at such other address as the receiving Party designates by proper notice to the sending Party.

H. CAPTIONS

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

I. NON-WAIVER

If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Director, or by any other employee or agent of the City, of any part of Broker's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law.

J. INSPECTIONS AND AUDITS

Representatives of the City have the right to perform, or to have performed, (1) audits of Broker's books and records pertaining to this Agreement, and (2) inspections of all places where work is undertaken in connection with this Agreement. Broker shall keep its books and records available for this purpose for at least four (4) years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

K. ENFORCEMENT

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Broker shall provide to the City Attorney all documents and records pertaining to this Agreement that the City Attorney requests to assist in determining Broker's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

L. AMBIGUITIES

If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

M. CONTROLLING PARTS

The Sections, Schedules, and Exhibits are intended to be complementary. What is set forth in one document is as binding as if set forth in each document. In some cases they each may address similar terms and requirements. If a conflict among the Sections, Schedules, and Exhibits arises, the following order of priority controls:

1. Sections
2. Exhibits

N. SURVIVAL

The Parties shall remain obligated under provisions of this Agreement, which by their nature survive termination, including, but not limited to, warranty, indemnification and confidentiality, for a period of four (4) years after termination of this Agreement or the completion of the last Work performed and accepted under this Agreement, whichever occurs first.

O. PUBLICITY

Broker shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

P. PARTIES IN INTEREST

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Broker only.

Q. SUCCESSORS AND ASSIGNS

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following Section. This Agreement does not create any personal liability on the part of any employee, officer or agent of the City.

R. BUSINESS STRUCTURE AND ASSIGNMENTS

Broker shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Broker shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the assignee and a clear identification of the fees to be paid to the assignee.

Broker shall not delegate any portion of its performance under this Agreement without the Director and City Attorney's prior written consent, such consent not to be unreasonably withheld or delayed provided that the City is not deprived of any rights or protections.

S. REMEDIES CUMULATIVE

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

T. BROKER DEBT

IF BROKER, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY CITY CONTROLLER IN WRITING. IF CITY CONTROLLER BECOMES AWARE THAT BROKER HAS INCURRED A DEBT, IT SHALL IMMEDIATELY NOTIFY BROKER IN WRITING. IF BROKER DOES NOT PAY THE DEBT WITHIN THIRTY (30) DAYS OF EITHER SUCH NOTIFICATION, CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO BROKER UNDER THIS AGREEMENT, AND BROKER WAIVES ANY RECOURSE THEREFOR.

U. LIMITATION ON LIABILITY

EXCEPT FOR INSTANCES OF INDEMNIFICATION UNDER SECTIONS IV.E. AND IV.F., THE LIABILITY OF BROKER UNDER THIS AGREEMENT TO THE CITY SHALL NOT EXCEED THE GREATER OF (A) THE DIFFERENCE BETWEEN 150% OF THE FEES THAT WOULD HAVE BEEN EARNED BY BROKER HEREUNDER MINUS ANY FEES ACTUALLY EARNED OR PAID TO AN ALTERNATIVE BROKER, IF ANY, (B) THE FEES ACTUALLY EARNED BY THE BROKER IF THEY WERE ACTUALLY EARNED, OR (C) THE INSURANCE PROCEEDS RECOVERED HEREUNDER, WHICHEVER IS GREATER; PROVIDED THAT THE FOREGOING LIMITATION SHALL NOT APPLY IN INSTANCES OF BROKER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. For the purposes of determining what fee Broker would have earned in option (A), the market price of the Products on either the day of contract breach or the date of contract termination, whichever is greater, shall be used.

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EXHIBIT "A"
EQUAL EMPLOYMENT OPPORTUNITY

1. Broker, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. Broker, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. Broker, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by City setting forth the provisions of this Equal Employment Opportunity Clause.

2. Broker, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. Broker, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of Broker's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. Broker, subcontractors, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Broker Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. Broker, subcontractors, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times are directed shall contain information as to the employment practice policies, program, and work force statistics of Broker, subcontractors, vendor, supplier, or lessee.

6. In the event of Broker's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and Broker, subcontractors, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. Broker shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractors or vendor. Broker will take such action with respect to any subcontractors or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Broker becomes involved in, or is threatened with litigation with a subcontractors or vendor as a result of such direction by the contracting agency, Broker may request the United States to enter into such litigation to protect the interests of the United States.

8. Broker shall file and shall cause of his subcontractors, if any, to file compliance reports with City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of Broker and each subcontractor.

EXHIBIT "B"
MWBE SUBCONTRACT TERMS

Broker shall insure that all subcontracts with MWBE subcontractors and suppliers are clearly labeled **"THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT"** and contain the following terms:

1. Tejas Office Supply (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of City of Houston's Director of the Mayor's Office of Business Opportunity ("Director").

2. Tejas Office Supply (MWBE subcontractor) shall permit representatives of City of Houston, at all reasonable times, to perform (1) audits of subcontractor's books and records, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action.

3. Within five (5) business days of execution of this subcontract, Broker (prime Broker) and Subcontractor shall designate in writing to Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

4. As concluded by the parties to this subcontract, and as evidenced by their signature hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration shall be conducted according to the following procedures:

a. Upon the decision of Director or upon written notice to Director from either party that a dispute has arisen, Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.

b. If the dispute is not resolved within the time specified, any party or Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by City's contract with American Arbitration Association on file in the office of the City's Mayor's Office of Business Opportunity.

c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.

d. If the American Arbitration Association no longer administers Affirmative Action arbitration for City, Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

e. All arbitrations shall be conducted in Houston, Texas unless the parties agree to another location in writing.

EXHIBIT "C"
DRUG POLICY COMPLIANCE AGREEMENT

I, Randall N. Lack Senior Vice President as an owner or officer of
(Name) (Print/Type) (Title)

Element Markets, LLC (Broker)
(Name of Company)

have authority to bind Broker with respect to its bid, offer or performance of any and all contracts it may enter into with City of Houston; and that by making this Contract, I affirm that Broker is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for Broker that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Brokers (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of Broker that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with City and may result in non-award or termination of the contract by City of Houston.

February 22, 2013
Date


Element Markets, LLC
Broker Name

Signature
Senior Vice President
Title

EXHIBIT "D"
BROKER'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT

I, Randall N. Lack, Senior Vice President, (Broker)
(Name) (Title)

as an owner or officer of Element Markets, LLC
(Name of Company)

have authority to bind Broker with respect to its bid, and hereby certify that Broker has no employee safety impact positions, as defined in Section 5.18 of Executive Order No. 1-31, that will be involved

in performing Emission Reduction Credit Brokerage and Consulting Services
(Project)

Broker agrees and covenants that it shall immediately notify City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

February 22, 2013
(Date)

Randall N. Lack
(Typed or Printed Name)

 KRB
(Signature)

Senior Vice President
(Title)

EXHIBIT "E"
DRUG POLICY COMPLIANCE DECLARATION

I, Randall N. Lack Senior Vice President as an owner or officer of
(Name) (Print/Type) (Title)

Element Markets, LLC (Broker - Name of Company) have personal
knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from August 2012 to February, 2013.

KRB (Initials) A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

KRB (Initials) Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Brokers, Executive Order No. 1-31. Employees have been notified of such procedures.

KRB (Initials) Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

KRB (Initials) Appropriate safety impact positions have been designated for employee positions performing on City of Houston contract. The number of employees in safety impact positions during this reporting period is

KRB (Initials) From August 2012 (Start date) to February 22, 2013 (End date) the following test has occurred

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	0	0	0	0
Number Employees Positive	0	0	0	0
Percent Employees Positive	0	0	0	0

KRB (Initials) Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

KRB (Initials) I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

February 22, 2013
(Date)

Randall N. Lack
(Typed or Printed Name)


 KRB
(Signature)
Senior Vice President
(Title)

EXHIBIT F

SCOPE OF WORK

Element Markets, LLC ("Broker") will provide the following Services to the City of Houston ("City") in furtherance of maximizing the most beneficial return from the marketing and sale of the following Texas Commission on Environmental Quality ("TCEQ") Houston-Galveston-Brazoria ("HGB") Emission Reduction Credits ("ERC") (hereinafter referred to as "Products") which are owned by the City:

- Certificate number 2558 in the amount of 12.4 tons per year of nitrogen oxides (NOx) and an expiration date of Nov. 14, 2014.
 - Certificate number 2559 in the amount of 14.3 tons per year of volatile organic compounds (VOC) and an expiration date of Nov. 14, 2014.
1. Exclusivity. During the Term of this Agreement, Broker shall be the sole and exclusive representative of City for all selling of the above Products, whether via bilateral transactions, request for proposals, or otherwise. To remove any doubt, it is understood that City is not obligated to accept the price offered for a Product or to consent to a proposed sale or accept an offer the Director concludes, at his sole discretion, is not in the best interest of the City.
 2. Services. Services provided by Broker to City ("Services") shall include, but not necessarily be limited to:
 - a. advise and consult City on the best time and manner to optimize its return on the sale of the Products;
 - b. using commercially reasonable efforts to find a buyer(s) for City's Products;
 - c. where applicable, preparing contract documents, transfer documentation, and any other documentation for the selling of Products, provided the City Attorney has approved such transaction and documents; and
 - d. coordinating the execution of any agreements between buyer(s) and City.

City understands that Broker is not acting as a fiduciary of City in its performances of the Services. Notwithstanding any other provision in this Agreement to the contrary, nothing in this Agreement shall preclude Broker from marketing like products or providing Services of a like nature.

3. Service Fee. City agrees to pay Broker a service fee equal to one-fourth percent (0.25%) of the total purchase price for any transaction regarding the selling of
-

Products by City or its affiliates. Broker shall collect the sales proceed directly from the buyer(s) of Products and shall remit to City the net sales proceeds (gross sales proceeds net of any transfer fees and Broker's service fee). However, in the event that City collects funds directly from a buyer(s) of Products, City shall pay to Broker Broker's one-fourth percent (0.25%) fee in accordance with Texas Government Code Section 2251.025. While City will have full discretion over any sale of Products, all transactions shall be exclusively conducted through Broker.
